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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,888	10/22/2001	Gunnar Flentje		7529

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EXAMINER

JACOBSON, TONY M

ART UNIT	PAPER NUMBER
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2644

14

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,888

Applicant(s)

FLENTJE, GUNNAR

Examiner

Tony M Jacobson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 5, 8, 9, 14, 17, and 18 of this application.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the grooves of the metal fittings with rectangular locknuts sliding therein of claims 8 and 17 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Although Applicant states in his reply that "The grooves of the metal fittings with rectangular locknuts do only apply to one of the omitted embodiments and are no longer featured in the application.", Applicant has not amended nor cancelled any claims, therefore this subject matter remains in the application.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the

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brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The amendment filed 22 April 2004 (paper 12) is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The substitute specification is replete with new matter. Any material presented in a substitute specification must be explicitly supported in the disclosure as originally filed. Examples of new matter are:

- a. "This effect can easily be noticed if an electric instrument is played into a mixing console and the resulting sound is compared to the sound of the same instrument played through an amplifier." at page 8, lines 9-12;
- b. all of paragraph 3 at page 9;
- c. all of paragraph 2 at page 10;
- d. the changing of "0-600 Hz" to "20-600 Hz" at paragraph 2 of page 11;

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- e. "Any reorientation of the speaker relative towards the cabinet would change the actual volume of the enclosure and its resonance frequencies and therefore the sound of the instrument would significantly be altered." at paragraph 2 of page 13;
- f. "... without changing its sound characteristics ..." at paragraph 1 of page 16;
- g. "... without changing or disabling the significant resonant frequencies which occur within the enclosure and the adjacent support surface and thereby maintaining the rendered sound constant. Either having to change the volume of air encompassed by the cabinet, disabling the resonance within the cabinet itself or having to cut off resonance in the support surface ..." at paragraph 2 of page 16;
- h. "... making it possible to send the higher frequencies directly to the listener's ear." at paragraph 1 of page 17; and
- i. "... which allows tilting back the actual loudspeaker without having to either alter the volume of its sound-creating enclosure and/or without having to remove the resonating wholesome unit partially or completely from its support surface." at paragraph 2 of page 24;
- j. "... have their higher frequency sound beaming upward ..." at paragraph 3 of page 24;
- k. "... or having to alter its sound characteristics." at the paragraph spanning pages 24 and 25.

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In general, the new matter seems to primarily consist of limitation to maintaining a constant volume of the speaker enclosure as the speaker angle is adjusted; directing, specifically, high frequency sounds to a listener or player's ears; and maintaining a constant sound quality as the speaker angle is adjusted. The examiner finds no support for such limitations in the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

4. The substitute specification filed 22 April 2004 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: the use of single square brackets to indicate deleted text in the marked-up version does not comply with 37 CFR 1.125(c), which requires deleted matter to be indicated by strike-through, or **for deletion of 5 or fewer characters**, double brackets may be used. Also, the substitute specification has not been entered due to the large amount of new matter introduced, as described above.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by McDonald (US 2,109,431).

7. Because Applicant has not indicated any amendment to the claims, it is assumed that the original claims remain pending. Those claims accordingly remain rejected on the grounds presented in the previous Office action.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (US 2,109,431) as set forth in the prior Office action.

10. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (US 2,109,431) in view of Fierens (US 4,696,037) and Peavey (US 3,151,699) as set forth in the prior Office action.

11. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (US 2,109,431) in view of Guy (US 4,757,544) and Brown et al. (US 6,101,261) as set forth in the prior Office action.

12. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (US 2,109,431) in view of Guy (US 4,757,544) as set forth in the prior Office action.

13. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (US 2,109,431) in view of Fierens (US 4,696,037), Bucky (US 2,179,840), Judson (US 1,738,172), Quenot (US 3,857,176), and Sheridan (US 2,545,112) as set forth in the prior Office action.

14. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (US 2,109,431) in view of Fierens (US 4,696,037), Bucky (US 2,179,840), Judson (US 1,738,172), Quenot (US 3,857,176), and

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Sheridan (US 2,545,112) as applied to claims 8 and 17 above, and further in view of Wolff et al. (US 1,866,831) as set forth in the prior Office action.

15. Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

16. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., maintaining a constant volume of the speaker cabinet) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is noted that if this limitation were included in the claims, an obviousness rejection would likely be made, as adjustable sealed speaker sub-enclosures are known in the prior art and would combine in an obvious manner with the currently cited references.

17. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231

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USPQ 375 (Fed. Cir. 1986). Although the speaker of Fierens itself does not meet all the limitations of the claims against which it is applied, in combination with the teachings of McDonald and Peavey, it fairly suggests the subject matter of present claims to one of ordinary skill in the art.

18. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

19. Although Applicant requests the examiner to draft exemplary allowable claims according to MPEP 707.07(j), the examiner does not see allowable subject matter in the present disclosure; and thus is unable to provide such claims.

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory

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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony M Jacobson whose telephone number is 703-305-5532. The examiner can normally be reached on M-F 11:00-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W Isen can be reached on 703-305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tmj
August 23, 2004


FORESTER W. ISEN
SUPERVISORY PATENT EXAMINER